

No. 1-14-2204

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 13485
)	
DESMOND SCOTT,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

- ¶ 1 **Held:** We affirm defendant's conviction because the witness's identification of defendant was sufficient to convict him of the charged offenses.
- ¶ 2 Following a bench trial, defendant Desmond Scott was convicted of one count of robbery (720 ILCS 5/18-1(a) (West 2012)), one count of aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)), and one count of criminal damage to property (720 ILCS 5/21-1(a)(1) (West 2012)). On appeal, defendant argues the evidence was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged by indictment with single counts of armed robbery, aggravated battery and criminal damage to property stemming from acts occurring on June 23, 2013, in Chicago. Defendant proceeded to a severed, simultaneous bench trial along with three codefendants Darnell Scott, Quintin Scott and Vincent Jackson.¹ The following evidence was adduced at trial.

¶ 4 Ting Shen testified that, shortly after 5 a.m. on June 23, 2013, he was present at North Avenue Beach, located at 1601 North Lake Shore Drive. It was near dawn and the sun was not up yet. Shen, a photo journalist, set up his camera gear about 300 feet from where he had parked his car. About 15 minutes after he arrived, a man approached him and asked if he had a lighter. The man, identified in court as Darnell, was about a foot away from Shen. After Shen responded that he did not have a lighter, Darnell demanded money and then charged at him, attempting to reach him. Darnell was not able to touch Shen but continued to back up and charge at him while Shen used his tripod as protection.

¶ 5 Shen testified that another man, identified in court as Quintin, approached to about two feet away. He told Shen to stop yelling at Darnell and to do what Darnell wanted him to do. Quintin then returned to the parking lot. Darnell continued to back up and charge at Shen. During this, Shen's Yankees baseball cap fell to the ground. Darnell picked up the cap, ran to his car which was in the same parking lot as Shen's, and threw the baseball cap into the vehicle.

¶ 6 Shen testified that he remained where he was, as Darnell's car was between Shen and his own car, which was parked 30 feet away. Darnell returned about 10 seconds later carrying a glass beer bottle. Darnell charged at Shen again. Shen hit him in the ribs and chest with the

¹ We will refer to defendant Desmond Scott as "defendant," Darnell Scott as "Darnell," and Quintin Scott as "Quintin."

tripod. In response, Darnell swung the bottle at Shen, but he missed and the bottle fell to the ground, shattering.

¶ 7 Darnell then returned to his car and returned with two other people, identified by Shen in court as defendant and Jackson. The three men surrounded Shen at a distance of one to two feet. They charged him, pulling him to the ground. While Shen was in a fetal position on the ground, he was punched in the face several times and lost his glasses. His injuries included cuts, burns, and scrapes, and his clothes were ripped. Some of his camera equipment was taken from him. After the beating ended, Shen saw the three men run back to their car in the parking lot. He attempted to chase after them, hoping to determine the license plate number of the vehicle. As Shen ran toward the parking lot exit after the car, he saw the police stop the vehicle and arrest the four passengers. He witnessed a police officer retrieve his Yankees baseball cap from the back of the vehicle. Shen later recovered two damaged pieces of camera equipment, which required repairs costing approximately \$4,500. At trial, Shen positively identified photographs of his Yankees cap and of the camera equipment taken from him.

¶ 8 Defendant testified that, on June 23, 2013, around 5:00 a.m., he was in the driver's seat of a car located in the parking lot at North Avenue Beach. With him were his brother, Darnell; his uncle, Quintin; his father, Jackson; and his cousin, Demetrius Ward. He stated that, at some point, everyone left the car but that Quintin returned to the car. The police arrested only defendant and Quintin in the car. The police also arrested Jackson and Darnell, but Ward was not arrested. Defendant stated that Ward was not arrested as he had gotten away. He did not know Ward's whereabouts. Defendant denied being involved in or seeing the attack on Shen, and he further denied striking or attempting to strike Shen. He also denied taking or attempting to take a baseball hat or cameras from Shen.

¶ 9 The trial court found defendant, Darnell, and Jackson guilty of aggravated battery, criminal damage to property, and robbery, the lesser-included offense of armed robbery. It found Quintin not guilty of all charges. The trial court found Shen to be an “extremely, extremely credible witness.” It had

“no doubt whatsoever that Mr. Darnell Scott, and Mr. Desmond Scott and Mr. Vincent Jackson surrounded Mr. Shen *** [and] *** that the victim, Mr. Shen, was struck on numerous occasions about the face and body.

These three individuals were the only three individuals surrounding Mr. Shen and no one else. ****”

¶ 10 After denying defendant’s written motion for a new trial, the court sentenced him to two years of felony probation, six months in the Cook County Department of Corrections time actually served, and 10 days in the Sheriff’s Work Alternative Program. Defendant filed a timely notice of appeal.

¶ 11 Defendant does not dispute the evidence was sufficient to prove that the three crimes were committed. He instead argues Shen’s identification of him as one of the offenders was insufficient to convict him because it was based on a minimal opportunity to observe him. Defendant also argues Shen’s testimony actually corroborates his alibi.

¶ 12 The standard of review when challenging the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. A reviewing court must not retry the defendant. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). Nor will a reviewing court substitute its own judgment for the trier

of fact on issues of the credibility of witnesses or the weight of the evidence. *People v. Digirolamo*, 179 Ill. 2d 24, 46 (1997). In a bench trial, the trial judge, as the trier of fact, is tasked with determining the credibility of witnesses, weighing the evidence and any inferences derived, and resolving any conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). “We will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant’s guilt.” *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 13 “Identification by a single witness is sufficient to support a conviction if the defendant is viewed under circumstances permitting a positive identification.” *People v. Gabriel*, 398 Ill. App. 3d 332, 341 (2010). This is true even where there is contradicting alibi testimony, as long as the witness had a sufficient opportunity to view the accused and the in-court identification is positive and credible. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). When assessing the reliability of a witness’s identification, we consider (1) the opportunity of the witness to view the offender during the crime, (2) the witness’s degree of attention at the time of the offense, (3) the accuracy of the witness’s prior descriptions of the offender, (4) the level of certainty exhibited by the witness at the subsequent identification, (5) the length of time between the offense and the identification. *Id. at 307-08*. Analyzing these factors, we find Shen’s identification was sufficiently reliable to convict defendant.

¶ 14 The first factor, the opportunity to view the offender, weighs in favor of the State. A short period of time observing an offender does not necessarily render a witness’s identification unreliable. See, e.g., *People v. Negron*, 297 Ill. App. 3d 519, 530-31 (1998) (finding identification reliable where the witnesses “did not have more than several seconds to identify their attackers”). Here, Shen had ample time to observe and identify his attackers, including

defendant, as they approached him from their car. He had further opportunity to view defendant at close proximity, from only two feet away, when defendant, Darnell, and Jackson “surrounded” him. Shen clearly had a sufficient opportunity to identify defendant before the attack occurred.

¶ 15 Further, despite losing his glasses during the attack, Shen was able to see defendant flee to his car, shortly before the car was stopped by the police and the occupants therein were arrested. While the incident occurred just before dawn, there was no indication the lighting in the area prevented Shen from making a positive identification of defendant. “The conditions need not be perfect and the observation need not be prolonged.” *People v. Benson*, 266 Ill. App. 3d 995, 1005 (1994). The trial court heard Shen’s testimony and found his identification to be reliable. We find this first factor weighs in favor of the State.

¶ 16 The second factor also weighs in favor of the State, as the evidence shows Shen was attentive throughout the time of the offense. He had previously had an altercation with Darnell, who demanded money and attempted to physically grab him. Because of the possibility of harm, Shen was likely focused on his safety and cognizant of those around him. Accordingly, this factor favors the State.

¶ 17 The third factor, the accuracy of the witness’s prior descriptions of the offender, is neutral as Shen did not provide a prior description. Defendant was arrested, on scene, moments after the attack took place. Not enough time had passed to allow Shen to provide a description of defendant, as defendant’s arrest was nearly contemporaneous with the attack. Accordingly, this factor is neutral. See *People v. Carlton*, 78 Ill. App. 3d 1098, 1105 (1979) (finding, where the witness did not provide a prior description of the offenders, this factor is neutral).

¶ 18 The fourth factor, the level of certainty of the witness’s identification, weighs in favor of the State. Defendant acknowledges that Shen identified him at trial but argues this factor should

be given little weight. In support, defendant argues that Shen never testified to his degree of certainty. While Shen did not specifically testify to his level of certainty, the trial court, after hearing all the evidence, determined “it has no doubt whatsoever that Mr. Darnell Scott, and Mr. Desmond Scott and Mr. Vincent Jackson surrounded Mr. Shen on the date of this incident *** I have no doubt that the victim, Mr. Shen, was struck on numerous occasions about the face and body.” We will not substitute our judgment for that of the court with respect to the reliability of the witness’s identification. See *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007) (“The reliability of a witness’s identification is a question for the trier of fact”). Defendant also argues this factor is flawed, citing to several cases from other jurisdictions holding, *inter alia*, that a witness’s confidence does not increase the likelihood the identification is accurate. However, cases from other jurisdictions are not binding or precedential on this court. *In re A.C.*, 2016 IL App (1st) 153047, ¶ 47. Accordingly, this factor weighs in favor of the State.

¶ 19 The last factor, the length of time between the offense and the witness’s identification likewise favors the State. Defendant argues that nearly 11 months passed between the offense and Shen’s in-court identification of defendant and thus, this length of time diminishes the identification. Although there was no specific testimony from Shen that he identified defendant at the scene, defendant was arrested moments after the attack occurred when police stopped the fleeing vehicle as Shen was chasing it, and Shen was present when the police arrested the men in the car. As the trial court noted: “[t]hey are all arrested together, not weeks later, not 10 miles away, they’re arrested moments after the incident occurred in the same parking lot Mr. Shen parked his car.” Additionally, even assuming the identification came nearly 11 months after the offense, we have previously upheld identifications made after an even longer period of time. See, e.g., *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (rejecting defendant’s argument that

identification made one year and four months later is unreliable). This factor weighs in favor of the State.

¶ 20 Accordingly, having considered the five *Slim* factors and viewing the evidence in the light most favorable to the State, Shen's identification of defendant was sufficiently reliable to prove defendant guilty beyond a reasonable doubt.

¶ 21 Beyond the *Slim* factors, defendant raises other arguments in support of his claim that Shen's identification of him was unreliable. First, defendant argues that the reliability of Shen's identification is diminished because he did not know defendant. In support, defendant cites to a secondary source and a case from another jurisdiction. Cases from other jurisdictions are not binding in this court (*In re A.C.*, 2016 IL App (1st) 153047, ¶ 47) and we decline to consider this secondary source as it is not relevant authority on appeal and, moreover, was not presented to the trial court. See *People v. Heaton*, 266 Ill. App. 3d 469, 477 (1994).

¶ 22 Defendant also argues that Shen's testimony actually served to corroborate his alibi. Defendant claimed at trial that, although he was in the driver's seat of the car, he did not leave the car. He insinuated his cousin, Ward, was the third offender. He asserts Shen's testimony that there were four people in the car besides Darnell and that someone was sitting in the driver's seat of the car during the arrest thus corroborates his alibi. We are unconvinced. Shen explicitly testified that defendant was part of the group that attacked him and identified him as such in court. The fact that *someone* was present in the driver's seat of the car and that a fifth person was at the scene does not support defendant's contention that *he* was present in the driver's seat during the attack and never left the car. Further, a trier of fact is not required to accept alibi testimony over a positive identification of a defendant, as the weight of alibi evidence is a matter of credibility for the trier of fact to determine. *Slim*, 127 Ill. 2d at 315. Ultimately, the trial court

heard defendant's testimony and rejected it, instead finding Shen to be credible. See *People v. Hall*, 194 Ill. 2d 305, 332 (2000) ("the trier of fact is not required to *** search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt").

¶ 23 Lastly, defendant argues that nothing corroborated Shen's identification of defendant and thus, because the State's entire case rests on Shen's "questionable" testimony, there is insufficient evidence to find him guilty. However, as explained above, Shen's identification was reliable. Moreover, the trial court found Shen to be an "extremely, extremely credible witness."

It noted:

"He [Shen] was honest and truthful on that witness stand. There was no embellishment of his testimony whatsoever. He said what he observed and what happened to him, and what he couldn't remember or couldn't say he did not say it. The Court finds it was thoughtful and it was deliberate. And in no significant fashion was his testimony impeached."

As the trial court found Shen to be reliable and credible, we will not substitute our judgment for that of the trier of fact. See *People v. Bradford*, 2016 IL 118674, ¶ 12. The positive testimony of a single credible witness is sufficient to convict a defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Accordingly, Shen's testimony alone is sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 24 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.